

AN ACT

RELATING TO TAXATION; CLARIFYING AND CONFORMING TAX INCENTIVES FOR THE FILM INDUSTRY; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 7-2F-1 NMSA 1978 (being Laws 2002, Chapter 36, Section 1) is amended to read:

"7-2F-1. FILM PRODUCTION TAX CREDIT.--

A. The tax credit created by this section may be referred to as the "film production tax credit". An eligible film production company may apply for, and the taxation and revenue department may allow, a tax credit in an amount equal to fifteen percent of direct production expenditures made in New Mexico that are directly attributable to the production in New Mexico of a film and that are subject to taxation by the state of New Mexico.

B. The film production tax credit shall not be claimed with respect to expenditures for which the film production company has delivered a nontaxable transaction certificate pursuant to Section 7-9-86 NMSA 1978.

C. A long-form narrative film production for which the film production tax credit is claimed shall contain an acknowledgment that the production was filmed in New Mexico.

D. To be eligible for the film production tax credit, a film production company shall submit to the New Mexico film division of the economic development department information required by the division to demonstrate conformity with the requirements of this section. The division shall determine the eligibility of the company

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and shall report this information to the taxation and revenue department in a manner and at times the economic development department and the taxation and revenue department shall agree upon.

E. To receive a film production tax credit, a film production company shall apply to the taxation and revenue department on forms and in the manner the department may prescribe. The application shall include a certification of the amount of direct production expenditures made in New Mexico with respect to the film production for which the film production company is seeking the film production tax credit. If the requirements of this section have been complied with, the taxation and revenue department shall approve the film production tax credit and issue a document granting the tax credit.

F. The film production company may apply all or a portion of the film production tax credit granted against personal income tax liability or corporate income tax liability. If the amount of the film production tax credit claimed exceeds the film production company's tax liability for the taxable year in which the credit is being claimed, the excess shall be refunded."

Section 2. A new Section 7-2F-2 NMSA 1978 is enacted to read:

"7-2F-2. DEFINITIONS.--As used in Chapter 7, Article 2F NMSA 1978:

A. "direct production expenditure" means a transaction that is subject to taxation in New Mexico, including:

(1) payment of wages, fringe benefits or fees for talent, management or labor to a person who is a New Mexico resident for purposes of the Income Tax Act;

(2) payment to a personal services corporation for the services

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of a performing artist, if:

- (a) the personal services corporation pays gross receipts tax in New Mexico on those payments; or
- (b) the performing artist receiving payments from the personal services corporation pays New Mexico income tax; and
- (3) any of the following provided by a vendor:
 - (a) the story and scenario to be used for a film;
 - (b) set construction and operations, wardrobe, accessories and related services;
 - (c) photography, sound synchronization, lighting and related services;
 - (d) editing and related services;
 - (e) rental of facilities and equipment;
 - (f) leasing of vehicles;
 - (g) food or lodging;
 - (h) airfare if purchased through a New Mexico-based travel agency or travel company;
 - (i) insurance coverage and bonding if purchased through a New Mexico-based insurance agent; and
 - (j) other direct costs of producing a film in accordance with generally accepted entertainment industry practice;

B. "film" means a single media or multimedia program, excluding advertising messages other than national or regional advertising messages intended for exhibition, that:

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(1) is fixed on film, digital medium, videotape, computer disc, laser disc or other similar delivery medium;

(2) can be viewed or reproduced;

(3) is not intended to and does not violate a provision of Chapter 30, Article 37 NMSA 1978; and

(4) is intended for reasonable commercial exploitation for the delivery medium used; and

C. "film production company" means a person that produces one or more films."

Section 3. Section 7-9-86 NMSA 1978 (being Laws 1995, Chapter 80, Section 1) is amended to read:

"7-9-86. DEDUCTION--GROSS RECEIPTS TAX--SALES TO QUALIFIED FILM PRODUCTION COMPANY.--

A. Receipts from selling or leasing property and from performing services may be deducted from gross receipts or from governmental gross receipts if the sale, lease or performance is made to a qualified production company that delivers a nontaxable transaction certificate to the seller, lessor or performer.

B. For the purposes of this section:

(1) "film" means a single media or multimedia program, including an advertising message, that:

(a) is fixed on film, digital medium, videotape, computer disc, laser disc or other similar delivery medium;

(b) can be viewed or reproduced;

(c) is not intended to and does not violate a provision of

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Chapter 30, Article 37 NMSA 1978; and

(d) is intended for reasonable commercial exploitation for the delivery medium used;

(2) "production company" means a person that produces one or more films for exhibition in theaters, on television or elsewhere;

(3) "production costs" means the costs of the following:

(a) a story and scenario to be used for a film;

(b) salaries of talent, management and labor, including payments to personal services corporations for the services of a performing artist;

(c) set construction and operations, wardrobe, accessories and related services;

(d) photography, sound synchronization, lighting and related services;

(e) editing and related services;

(f) rental of facilities and equipment; or

(g) other direct costs of producing the film in accordance with generally accepted entertainment industry practice; and

(4) "qualified production company" means a production company that meets the provisions of this section and has registered or will register with the New Mexico film division of the economic development department.

C. A qualified production company may deliver the nontaxable transaction certificates authorized by this section only with respect to production costs."

Section 4. SEVERABILITY.--If any part or application of this act is held invalid,

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the remainder or its application to other situations or persons shall not be affected.

Section 5. APPLICABILITY.--The provisions of Section 1 of this act apply to films produced in New Mexico on or after January 1, 2003.

Section 6. EFFECTIVE DATE.--The effective date of the provisions of Section 3 of this act is July 1, 2003.